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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHAN MEYERS, JUSSI HOLOPAINEN,
TERJE LUNDIN, JOUKA MATTILA,
and EERO RASANEN

Appeal 2009-000911
Application 09/753,844
Technology Center 2100

Decided: March 11, 2010

Before HOWARD B. BLANKENSHIP, JEAN R. HOMERE, and
JAY P. LUCAS, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1, 3, 5, and 14-29, which are all of the claims remaining in the application.[1] We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

Invention

Appellants' invention relates to statistical filtering of content via pixel-based metadata. Data that is supplied to a display having a plurality of pixels includes both content to be displayed and metadata that identifies the content of the respective pixel as being of a particular type (Fig. 2). Identifying the content as a particular type enables the classification of the pixels on a per pixel basis into one or more categories. For example, metadata can identify a pixel as containing objectionable content or some other information or type of content not desired by a user. The pixels containing objectionable or undesired content can then be filtered out of the picture in a more precise way, such as deleting or blurring the undesired content in the image without hiding the entire image. Abstract.

Representative Claims

1. A system for providing discretionary viewing control in displaying image data, comprising:

a display for displaying image data, the display comprising a plurality of pixels; and

[1] Appellants' Appeal Brief classifies claims 6-13 as "withdrawn." However, Appellants canceled the claims in an amendment filed February 23, 2004.

an integrated circuit in connection with said display for processing said image data, wherein, for each of the plural pixels, said image data comprises at least first and second portions of image data that are linked together, the first portion including payload data and the second portion including metadata, wherein said payload data comprises content for the pixel and said metadata comprises a value selected from a predefined set of values which classifies the pixel independently from the other pixels, whereby, because each of the processable pixels are individually classified according to a particular metadata value selected from the predefined set of values, said integrated circuit is able to perform operations on individual pixels based on their metadata, said integrated circuit comprising:

a filter for obscuring the content of only a plurality of pixels that has a metadata value that exceeds a discretionary threshold value without preventing the display of the content of the remaining plurality of pixels that does not have a metadata value that exceeds the discretionary threshold value.

14. An image data frame to be processed in an integrated circuit and displayed pixel-wise, comprising:

for each of a plurality of pixels in said image data frame, at least first and second portions of image data that are linked together, the first portion comprising payload data and the second portion comprising metadata;

wherein said payload data comprises content of the pixel independently, and said metadata comprises a metadata value selected

from a predefined set of values, which classifies the pixel independently from the other pixels;

whereby, because each pixel is individually classified according to a particular metadata value selected from the predefined set of values, the content of only a plurality of pixels that has a metadata value that exceeds a discretionary threshold value is obscured from the user's view without preventing the display of the content of the remaining plurality of pixels that does not have a metadata value that exceeds the discretionary threshold value.

Prior Art

Humes	5,996,011	Nov. 30, 1999
Blumenau	6,108,637	Aug. 22, 2000
Reilly	6,580,422 B1	Jun. 17, 2003
Lynn	6,595,859 B2	Jul. 22, 2003
Crawford	6,781,608 B1	Aug. 24, 2004
Swift	6,895,111 B1	May 17, 2005

Appellants' admitted prior art at Specification page 6, lines 3-20.

Examiner's Rejections

Claims 1, 3, 14, 15, 19-23, and 25-29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lynn, Humes, Swift, and Crawford.

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Lynn, Humes, Swift, Crawford, and Reilly.

Claims 16, 17, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lynn, Humes, Swift, Crawford, and Blumenau.

Claim 18 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Lynn, Humes, Swift, Crawford, and Appellants' admitted prior art.

ISSUES

(1) Have Appellants shown that the Examiner erred in finding that the combination of Lynn, Humes, Swift, and Crawford teaches using pixel content and metadata in the manner required by independent claims 1, 3, 19, and 29?

(2) Have Appellants identified any feature of independent claim 14 that is entitled to patentable weight and not taught or rendered obvious by the combination of Lynn, Humes, Swift, and Crawford?

FINDINGS OF FACT

Lynn

Lynn discloses an Internet marketing method and game whereby a user (or player) is encouraged to "point and click" on a screen display image (82; Fig. 3). The x-y coordinate location of the pixel or image area is compared against stored x-y coordinates for winning pixel or image area locations, by which the user may win a prize. A loser is directed to more advertising (Figs. 4, 5). Col. 1, ll. 51-67; col. 3, ll. 17-25 and 31-41; col. 4, ll. 16-24; col. 5, ll. 31-34.

Humes

Humes discloses a method of filtering objectionable text from World Wide Web pages on the Internet by, for example, comparing each word in

the Web page to a "dictionary." If the Web page contains an objectionable word, access to the entire Web page, or a portion thereof, may be denied. If the Web page does not contain any text, the method does not filter the Web page, since the method is only capable of filtering text or other recognizable data patterns. Col. 2, l. 48 - col. 3, l. 8; col. 3, ll. 41-49; col. 4, ll. 45-60.

Swift

Swift discloses evaluating graphic image files for objectionable content by classifying each pixel as not representing human skin or perhaps representing human skin by examination of the pixel's spectral components. If adjacent pixels are found to possibly represent human skin, display of the graphic image file may be disallowed after a statistical analysis of the pixels. Abstract; col. 3, ll. 10-47; col. 8, ll. 17-43; col. 9, ll. 11-32.

Crawford

Crawford discloses a user that can gradually display a sharper version of a blurred view of a possibly objectionable image (e.g., a received "buddy icon"). The sharpening may be accomplished by displaying more pixels. Figs. 10A-10D; col. 1, ll. 36-40; col. 15; ll. 4-51.

PRINCIPLES OF LAW

Claim Interpretation

Our reviewing court has held that non-functional descriptive material cannot lend patentability to an invention that would have otherwise been anticipated by the prior art. *See In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004). *Cf. In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983) (when

descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability). The *content* of non-functional descriptive material is not entitled to weight in the patentability analysis. *See In re Lowry*, 32 F.3d 1579, 1583 (Fed. Cir. 1994) ("Lowry does not claim merely the information content of a memory."). *See also Ex parte Nehls*, 88 USPQ2d 1883, 1887-90 (BPAI 2008) (precedential) (discussing non-functional descriptive material).

Obviousness

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007).

ANALYSIS

Section 103(a) rejection of claims 1, 3, 5, 16, 17, 19-26, 28, and 29

The Examiner finds that Lynn does not teach "a filter for obscuring the content of only a plurality of pixels that has a metadata value that exceeds a discretionary threshold value without preventing the display of the content of the remaining plurality of pixels that does not have a metadata value that exceeds the discretionary threshold value" as recited in claim 1. Ans. 3-4.

The Examiner finds that Humes teaches "a filter for obscuring the content of only a plurality of pixels that has a metadata value that exceeds a discretionary threshold value without preventing the display of the content of the remaining plurality of pixels that does not have a metadata value that exceeds the discretionary threshold value" as recited in claim 1. Ans. 4. However, Humes teaches a filter for filtering text from a Web page. Humes does not discuss filtering pixels. In fact, the filter of Humes cannot be used if text is not present in the Web page. Therefore, Humes does not disclose or suggest a filter for obscuring the content of only a plurality of pixels as recited in claim 1.

The Examiner finds that Swift teaches a filter for detecting the content of a plurality of pixels that has a metadata value that exceeds a discretionary threshold value. Ans. 4. However, Swift classifies each pixel in a graphic image file as not representing human skin or perhaps representing human skin by examining the pixel's spectral components. If adjacent pixels are found to possibly represent human skin, display of the graphic image file may be disallowed. The Examiner has not shown how disallowing display of a graphic image file because adjacent pixels are classified as possibly representing human skin corresponds to "a filter for obscuring the content of only a plurality of pixels that has a metadata value that exceeds a discretionary threshold value without preventing the display of the content of the remaining plurality of pixels that does not have a metadata value that exceeds the discretionary threshold value" as recited in claim 1.

The Examiner finds that Crawford teaches a technique for obscuring the content of image data. Ans. 4. However, Crawford does not disclose or suggest "a filter for obscuring the content of only a plurality of pixels that

has a metadata value that exceeds a discretionary threshold value without preventing the display of the content of the remaining plurality of pixels that does not have a metadata value that exceeds the discretionary threshold value" as recited in claim 1.

The Examiner has thus failed to establish that Lynn, Humes, Swift, and Crawford, alone or in combination, teach or suggest "a filter for obscuring the content of only a plurality of pixels that has a metadata value that exceeds a discretionary threshold value without preventing the display of the content of the remaining plurality of pixels that does not have a metadata value that exceeds the discretionary threshold value" as recited in claim 1.

Because independent claims 3, 19, and 29 recite similar limitations with respect to using pixel content and metadata, and are "rejected under the same rationale as claim 1," (Ans. 4-5), we are persuaded that the Examiner has failed to establish a prima facie case of obviousness for these claims. Because each of claims 5, 16, 17, 20-26, and 28 incorporates the limitations of claim 1, claim 3, or claim 19, we conclude that the applied rejections also fail to establish a prima facie case of obviousness for these dependent claims.

Section 103(a) rejection of claims 14, 15, 18, and 27

Claim 14 is independent, with claims 15, 18, and 27 dependent on claim 14. Appellants rely on claim 14, which is directed to an "image data frame" that is "to be processed" in an integrated circuit and displayed pixel-wise, with the data frame comprising "first and second portions of image

data that are linked together, the first portion comprising payload data and the second portion comprising metadata."

Claim 14 does not require any processing by an integrated circuit. Claim 14 does not require any display or any displaying of pixel content. Even if we presume that the "image data frame" must reside in an electronic memory, the image data frame does nothing to modify the underlying structure or function of the memory. The "image data frame" is thus, at best, mere data resident in an electronic memory. The descriptive material relating to what the data is to represent, or the future intended use of the data, is not entitled to weight in the patentability analysis, and cannot distinguish the invention from the prior art.

Appellants have not identified any feature in base claim 14 that would serve to distinguish the invention from mere data that might be contained in an electronic memory. Therefore, we are not persuaded that the Examiner erred in rejecting claims 14, 15, 18, and 27.

CONCLUSIONS OF LAW

(1) Appellants have shown that the Examiner erred in finding that the combination of Lynn, Humes, Swift, and Crawford teaches using pixel content and metadata in the manner required by independent claims 1, 3, 19, and 29.

(2) Appellants have not identified any feature of independent claim 14 that is entitled to patentable weight and not taught or rendered obvious by the combination of Lynn, Humes, Swift, and Crawford.

DECISION

The rejection of claims 1, 3, 19-23, 25, 26, 28, and 29 under 35 U.S.C. § 103(a) as being unpatentable over Lynn, Humes, Swift, and Crawford is reversed.

The rejection of claim 5 under 35 U.S.C. § 103(a) as being unpatentable over Lynn, Humes, Swift, Crawford, and Reilly is reversed.

The rejection of claims 16, 17, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Lynn, Humes, Swift, Crawford, and Blumenau is reversed.

The rejection of claims 14, 15, and 27 under 35 U.S.C. § 103(a) as being unpatentable over Lynn, Humes, Swift, and Crawford is affirmed.

The rejection of claim 18 under 35 U.S.C. § 103(a) as being unpatentable over Lynn, Humes, Swift, Crawford, and Appellants' admitted prior art is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED-IN-PART

msc

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